AN ACT

RELATING TO PROCUREMENT; MODIFYING THE PREFERENCE ADVANTAGE
FOR IN-STATE BUSINESS; CHANGING THE DEFINITIONS OF "RESIDENT
BUSINESS" AND "RESIDENT CONTRACTOR"; CHANGING THE PROCESS FOR
OBTAINING CERTIFICATION AS A RESIDENT BUSINESS OR RESIDENT
CONTRACTOR; ELIMINATING PREFERENCES FOR RESIDENT
MANUFACTURERS AND NEW YORK STATE BUSINESSES; PROVIDING
PENALTIES; REPEALING SECTION 13-1-21.2 NMSA 1978 (BEING LAWS
1997, CHAPTER 1, SECTION 1 AND LAWS 1997, CHAPTER 2,
SECTION 1); DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979,
Chapter 72, Section 1, as amended) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

(1) "business" means a commercial enterprise
carried on for the purpose of selling goods or services,
including growing, producing, processing or distributing
agricultural products;

(2) "formal bid process" means a competitive
sealed bid process;

(3) "formal request for proposals process"
means a competitive sealed proposal process, including a
competitive sealed qualifications-based proposal process;
(4) "public body" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state or a political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(5) "resident business" means a business that has a valid resident business certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978; and

(6) "recycled content goods" means supplies and materials composed twenty-five percent or more of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

B. When a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a resident business to be five percent lower than the bid actually submitted.

C. When a public body makes a purchase using a formal request for proposals process:

(1) five percent of the total weight of all
the factors used in evaluating the proposals shall be awarded
to a resident business based on the resident business
possessing a valid resident business certificate; or

(2) if the contract is awarded based on a
point-based system, a resident business shall be awarded the
equivalent of five percent of the total possible points to be
awarded based on the resident business possessing a valid
resident business certificate.

D. When a joint bid or joint proposal is submitted
by both resident and nonresident businesses, the resident
business preference provided pursuant to Subsection B or C of
this section shall be reduced in proportion to the percentage
of the contract, based on the dollar amount of the goods or
services provided under the contract, that will be performed
by a nonresident business as specified in the joint bid or
proposal.

E. When bids are received for both recycled
content goods and nonrecycled content goods, the public body
shall deem the bids submitted for recycled content goods of
equal quality to be five percent lower than the bids actually
submitted. A bid calculation pursuant to this subsection for
a resident business shall not also receive the bid
calculation preference pursuant to Subsection B of this
section.

F. The procedures provided in Sections 13-1-172
through 13-1-183 NMSA 1978 or in an applicable purchasing
ordinance apply to a protest to a public body concerning the
awarding of a contract in violation of this section.

G. This section shall not apply when the
expenditure includes federal funds for a specific purchase."

SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 1969,
Chapter 184, Section 1, as amended) is amended to read:

"13-1-22. RESIDENT BUSINESS AND RESIDENT CONTRACTOR
CERTIFICATION.--

A. To receive a resident business preference
pursuant to Section 13-1-21 NMSA 1978 or a resident
contractor preference pursuant to Section 13-4-2 NMSA 1978, a
business or contractor shall submit with its bid or proposal
a copy of a valid resident business certificate or valid
residential contractor certificate issued by the taxation and
revenue department.

B. An application for a resident business
certificate shall include an affidavit from a certified
public accountant setting forth that the business is licensed
to do business in this state and that:

(1) the business has paid property taxes or
rent on real property in the state and paid at least one
other tax administered by the state in each of the three
years immediately preceding the submission of the affidavit;

(2) if the business is a new business, the
owner or majority of owners has paid property taxes or rent
on real property in the state and has paid at least one other
tax administered by the state in each of the three years
immediately preceding the submission of the affidavit and has
not applied for a resident business or resident contractor
certificate pursuant to this section during that time period;

(3) if the business is a relocated business,
at least eighty percent of the total personnel of the
business in the year immediately preceding the submission of
the affidavit were residents of the state and that, prior to
the submission of the affidavit, the business either leased
real property for ten years or purchased real property
greater than one hundred thousand dollars ($100,000) in value
in the state; or

(4) if the business is a previously
certified business or was eligible for certification, the
business has changed its name, has reorganized into one or
more different legal entities, was purchased by another legal
erity but operates in the state as substantially the same
commercial enterprise or has merged with a different legal
erity but operates in the state as substantially the same
commercial enterprise.

C. An application for a resident contractor
certificate shall include an affidavit from a certified
public accountant setting forth that the contractor is
currently licensed as a contractor in this state and that:

(1) the contractor has:

(a) registered with the state at least one vehicle; and

(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either
leased real property for ten years or purchased real property
greater than one hundred thousand dollars ($100,000) in value
in the state; or

(4) if the contractor is a previously
certified contractor or was eligible for certification, the
contractor has changed its name, has reorganized into one or
more different legal entities, was purchased by another legal
entity but operates in the state as substantially the same
enterprise or has merged with a different legal entity but
operates in the state as substantially the same commercial
enterprise.

D. The taxation and revenue department shall
 prescribe the form and content of the application and
 required affidavit. The taxation and revenue department
 shall examine the application and affidavit and, if
 necessary, may seek additional information to ensure that the
 business or contractor is eligible to receive the certificate
 pursuant to the provisions of this section. If the taxation
 and revenue department determines that an applicant is
 eligible, the department shall issue a certificate pursuant
 to the provisions of this section. If the taxation and
 revenue department determines that the applicant is not
 eligible, the department shall issue notification within
 thirty days. If no notification is provided by the
 department, the certificate is deemed approved. A
certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business or resident contractor shall reapply for a certificate.

E. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.

F. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a resident business or resident contractor preference for a bid or proposal and the resident business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

(1) is not eligible to receive a certificate or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978 for a period of five years from the date on which the
taxation and revenue department became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and

(2) is subject to an administrative penalty of up to fifty thousand dollars ($50,000) for each violation.

G. In a decision issued pursuant to Subsection E or F of this section, the taxation and revenue department shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not to exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

I. The state auditor may audit or review the issuance or validity of certificates.

J. For purposes of this section:

(1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;

(2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years;

(3) "legacy contractor" means a construction
business that has been licensed in this state for ten consecutive years; and

   (4) "relocated business" means a business that moved eighty percent of its total domestic personnel from another state to New Mexico in the past five years."

SECTION 3. Section 13-1-103 NMSA 1978 (being Laws 1984, Chapter 65, Section 76, as amended) is amended to read:

"13-1-103. INVITATION FOR BIDS.--

   A. An invitation for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where bids are to be received, the date, time and place of the bid opening and the requirements for complying with any applicable in-state preference provisions as provided by law.

   B. If the procurement is to be by sealed bid without electronic submission, the invitation for bids shall include the location where bids are to be received and the date, time and place of the bid opening.

   C. If the procurement is to be by sealed bid with part or all of the bid to be submitted electronically, the invitation for bids shall comply with the requirements of Section 13-1-95.1 NMSA 1978."

SECTION 4. Section 13-1-112 NMSA 1978 (being Laws 1984,
Chapter 65, Section 85, as amended) is amended to read:

"13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR PROPOSALS.--

A. Competitive sealed proposals, including competitive sealed qualifications-based proposals, shall be solicited through a request for proposals that shall be issued and shall include:

(1) the specifications for the services or items of tangible personal property to be procured;

(2) all contractual terms and conditions applicable to the procurement;

(3) the form for disclosure of campaign contributions given by prospective contractors to applicable public officials pursuant to Section 13-1-191.1 NMSA 1978;

(4) the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed; and

(5) the requirements for complying with any applicable in-state preference provisions as provided by law.

B. A request for proposals may, pursuant to Section 13-1-95.1 NMSA 1978, require that all or a portion of a responsive proposal be submitted electronically.

C. In the case of requests for competitive qualifications-based proposals, price shall be determined by formal negotiations related to scope of work."
SECTION 5. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended) is amended to read:

"13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF PREFERENCE.--

A. For the purposes of this section:

(1) "formal bid process" means a competitive sealed bid process;

(2) "formal request for proposals process" means a competitive sealed proposal process, including a competitive sealed qualifications-based proposal process;

(3) "public body" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state or a political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(4) "public works contract" means a contract for construction, construction management, architectural, landscape architectural, engineering, surveying or interior design services; and

(5) "resident contractor" means a person
that has a valid resident contractor certificate issued by
the taxation and revenue department pursuant to Section

B. For the purpose of awarding a public works
contract using a formal bid process, a public body shall deem
a bid submitted by a resident contractor to be five percent
lower than the bid actually submitted.

C. When a public body awards a contract using a
formal request for proposals process:

(1) five percent of the total weight of all
the factors used in evaluating the proposals shall be awarded
to a resident contractor based on the resident contractor
possessing a valid resident contractor certificate; or

(2) if the contract is awarded based on a
point-based system, a resident contractor shall be awarded
the equivalent of five percent of the total possible points
to be awarded based on the resident contractor possessing a
valid resident contractor certificate.

D. When a joint bid or joint proposal is submitted
by both resident and nonresident contractors, the resident
contractor preference provided pursuant to Subsection B or C
of this section shall be reduced in proportion to the
percentage of the contract, based on the dollar amount of the
goods or services provided under the contract, that will be
performed by a nonresident contractor as specified in the

joint bid or joint proposal.

E. The procedures provided in Sections 13-1-172 through 13-1-183 NMSA 1978 or in an applicable purchasing ordinance apply to a protest to a public body concerning the awarding of a contract in violation of this section."

SECTION 6. Section 13-4-5 NMSA 1978 (being Laws 1933, Chapter 19, Section 1, as amended by Laws 1997, Chapter 1, Section 4 and also by Laws 1997, Chapter 2, Section 4) is amended to read:

"13-4-5. USE OF NEW MEXICO MATERIALS.--In all public works within New Mexico, whether constructed or maintained by the state or by a department, board or commission of the state or by any political subdivision of the state, or in any construction or maintenance to which the state or any political subdivision of the state has granted aid, preference shall be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico. In any case where, in the judgment of the different officers, boards, commissions or other authorities in this state vested with the power of contracting for material used in the construction or maintenance of public works referred to in this section, it appears that an attempt is being made by producers, growers, processors or manufacturers in the state to form a trust or combination of any kind for the purpose of fixing or
regulating the price of materials to be used in any public works to the detriment of or loss to the state, the provisions of this section shall not apply."

SECTION 7. TEMPORARY PROVISION.--A certification as a resident business or resident manufacturer by the general services department that is in effect prior to passage of this 2011 act is valid until January 1, 2012 for the purpose of obtaining a resident business preference pursuant to Section 13-1-21 NMSA 1978. A certification as a resident contractor by the general services department that is in effect prior to passage of this 2011 act is valid until January 1, 2012 for the purpose of obtaining a resident contractor preference pursuant to Section 13-4-2 NMSA 1978. After January 1, 2012, a certification as a resident business or resident contractor by the taxation and revenue department for the purpose of obtaining a resident business preference or a resident contractor preference is required for all new bids and proposals.

SECTION 8. REPEAL.--Section 13-1-21.2 NMSA 1978 (being Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2, Section 1) is repealed.

SECTION 9. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.